

MEMORANDUM OF UNDERSTANDING
BETWEEN
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND
CALIFORNIA DEPARTMENT OF FISH AND GAME

This Memorandum of Understanding (MOU) by and between the California Department of Fish and Game, hereinafter called the Department, and the California Department of Transportation, hereinafter called CalTrans, is for the purpose of defining and delineating routine maintenance in San Luis Obispo, Monterey and San Benito counties.

WHEREAS, the Department is required to conserve the fish and wildlife resources of this state; and

WHEREAS, Fish and game Code section 1601 allows the Department to propose reasonable modifications to construction activities to allow for the protection and continuance of existing fish and wildlife resources that may be substantially adversely affected by those activities, and provides for agreement with the Department on routine maintenance of facilities; and

WHEREAS, it is essential for CalTrans to perform maintenance and operations that will require alteration of the bed, channel, or bank of rivers, streams, or lakes; and

WHEREAS, it is mutually beneficial to delineate and define routine maintenance, to establish procedures to expedite maintenance activities, and to provide for the protection of fish and wildlife habitat during such maintenance activities; and

WHEREAS, nothing in this agreement constitutes a waiver of other statutes or regulations, nor constitutes permission to take any state or federally listed species under the State or Federal Endangered Species Acts; and

WHEREAS, nothing in this agreement shall constitute a waiver of any future or current Department claims to the use and maintenance of natural conditions under the public trust doctrine;

NOW, THEREFORE, the Department and CalTrans agree to the following:

1. General Provisions

- CALL FOR CLARIFICATION?
- a. If the work as described in this MOU is substantially changed, or conditions affecting fish and wildlife resources substantially change, or such resources are adversely affected by the activity conducted under this MOU, a separate Notification and Agreement will be required pursuant to Fish and Game Code Section 1601.
OR OTHER AGENT
 - b. This MOU only applies to CalTrans work in Monterey, San Benito and San Luis Obispo counties. It does not apply to work conducted by contract for CalTrans.

c. Except where otherwise stated, all work shall be conducted ^{IN DRY} only between April 15 and October 15 of each year, except ^{CONDITIONS} emergency work, done pursuant to Fish and Game Code Section 1601. For the purpose of this section, the term ^{VEGETATION} "emergency" is defined by public Resources Code section ^{IN SAME #} 21060.3.

d. Equipment shall not be stored within 50 feet of a channel to avoid releasing petroleum hydrocarbons in the channel.

^{IS THIS NECESSARY?} e. No herbicides shall be used in any stream channel without prior written approval from the Department. Such use shall conform to all applicable State and Federal E.P.A. regulations.

f. No work shall be conducted in a flowing stream. All work shall be conducted in a dry streambed. Any work in a flowing stream will require a separate Notification and Agreement. ^{OR WHERE SURFACE WATER IS PRESENT.}

^{ORD WATR W/ 1-H.} g. Except where otherwise specified, no heavy equipment shall be used in the streambed without prior written approval and according to conditions set by the Department.

2. Authorized Activities.

The following shall constitute routine operation and maintenance and shall not require further notice or fees to, nor Agreement with, the Department subsequent to this initial notification and Agreement:

^{WHY?}
^{IS THIS NECESSARY?} a. Control of weeds and grasses by mowing on the stream banks. This activity shall occur between July 15 and October 15 of each year.

b. Routine removal of [?] minimum vegetation to insure proper functioning and operation of culverts, pipes, bridges, and other existing water control facilities or structures necessary for public health, safety, and benefit. Backhoes and tractors may be used to pull or lift cut vegetation from the streambed if the backhoe or tractor is operated from the top of bank. All such routine vegetation removal shall be limited to the stream bottom and shall extend no further from the existing water control facility or structure than necessary to facilitate ready stream flow. ^{QUANTIFY BY SIZE & DISTANCE? FROM FACILITY}

c. Removal of woody or herbaceous vegetation with hand tools in the stream bottom. The stream bottom is defined as the toe of one bank to the toe of the other bank.

d. Removal of fallen trees, branches and associated debris. ^{PRE-NOTIFICATION FOR REMOVAL OF FALLEN TREES}

e. Removal of soil, debris, rubbish and other non-living material from concrete lined channels and culverts.

^{DOES NOT APPLY TO VEGETATION}

f. Cleaning, repair and replacement of existing flap gates or other existing water control devices.

g. Replenishment of clean rock riprap in previously riprapped areas to maintain bank stabilization. Placement of materials shall be done without operating heavy equipment in the streambed or channel. If replacement requires removal of riparian vegetation, prior written approval shall be obtained from the Department.

WITHIN EXISTING
FOOTPRINT

h. When intermittent stream channels are dry, heavy equipment may be used in the channels to remove silt, debris or rubbish provided bank slope vegetation is left undisturbed and all material removed is placed where it will not reenter the stream. Any activity which requires disturbance to bank slope vegetation or which requires removal of substrate greater than 12 inches in depth shall require prior written approval with the Department. Rock, cobble and gravel sections of the streambed shall not be disturbed.

NO TREES +
VEGETATION
SHRUB REMOVAL

NOT QUANTIFIABLE
NEEDS TO BE
DEFINEABLE

3. Reporting Requirements and Fees

a. CalTrans shall provide to the Regional Manager, Region 3, of the Department, written notification of maintenance projects completed within the preceding quarter (quarterly reports). A maintenance project is defined as one or more of the maintenance activities identified in this MOU that has been performed during any given reporting period. Due dates for submitting quarterly reports shall be as follows:

May 15 - for first quarter reports (January - March)
August 15 - for second quarter reports (April - June)
November 15 - for third quarter reports (July - September)
February 15 - for fourth quarter reports (October - December)

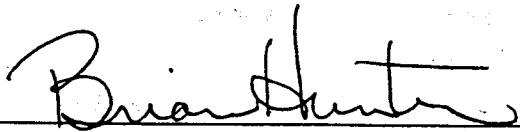
b. A fee payable to the Department shall accompany each quarterly report. The fee amount shall be in accordance with the current fee schedule, as published by the Department for work performed under a Memorandum of Understanding, based on the number of maintenance projects completed within a calendar year.

4. Amendments and Cancellation

a. The Department may review and amend or cancel this MOU at its discretion. The Department will confer with CalTrans prior to amendments or cancellation.

5. Time Period

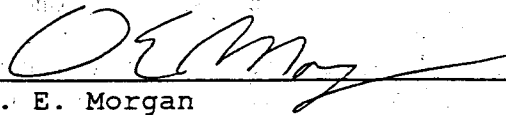
- a. This MOU shall run for five years, through June 30, 2002.
At that time it may be renewed after it is reviewed and
updated as necessary.



Brian Hunter
Regional Manager
Region 3
Department of Fish and Game

9-16-97

Date



O. E. Morgan
Deputy District Director
Maintenance & Operations
Department of Transportation

10-10-97

Date